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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

DAVID HOUGH; *et al.*

Plaintiffs,

vs.

RYAN CARROLL; *et al.*

Defendants.

Case No.: 2:24-cv-02886-WLH

**PLAINTIFFS' OPPOSITION TO  
MOTION TO QUASH**

Hearing: July 12, 2024, 1:30 pm  
Presiding Judge: (Unknown; the Motion  
is directed to District Judge Hsu, but  
discovery motions are typically routed  
to Magistrate Judge Kim)  
Trial Date: N/A

**PLAINTIFFS' OPPOSITION TO MOTION TO QUASH**

## BACKGROUND

### **I. The Court Gave Plaintiffs Leave To Issue The Subpoenas At Issue Because Defendants Had Failed To Comply With The Asset-Disclosure TRO**

This case is a putative class action brought by Plaintiffs who allege that they are the victims of Jurisdictional Defendants' scheme to (1) defraud Plaintiffs, and (2) subsequently conceal the proceeds of the fraud. At the outset of this matter, on April 15, 2024, the Court issued a temporary restraining order requiring Jurisdictional Defendants to freeze their assets (with an exception for ordinary personal expenditures) and disclose their assets. (ECF 17).

At a subsequent hearing, the Court found that Jurisdictional Defendants had demonstrated "bad faith efforts to comply with the TRO" and, accordingly, the Court (1) issued an order to show cause why Defendants should not be sanctioned, and (2) granted Plaintiffs leave to conduct expedited discovery, including certain third-party discovery at issue in Defendants' Motion to Quash (the "Motion"). (ECF 41-42).

At a subsequent hearing on May 13, 2024, the Court converted the temporary restraining order into a preliminary injunction, and the Court stated on the record that Plaintiffs could issue subpoenas not just to financial entities, but also to other third-party entities to obtain information about Defendants' assets. Plaintiffs have requested a transcript of that hearing and expect to receive that transcript the week of

1 June 24, 2024. Plaintiffs will file a copy of that transcript as a supplement to this brief  
2 as soon as the transcript is available.

3 In accordance with that statement on the record, on May 16, 2024, Plaintiffs  
4 issued subpoenas to third-party entities requesting “[a]ll documents reflecting action  
5 upon assets or accounts held for the benefit of or controlled by, in whole or in part,  
6 any individuals or entities listed in Attachment A ... ‘Documents’ includes without  
7 limitation: account statements, wire transfer records, checks, correspondence, and  
8 account opening documents.” (Motion at ¶ 21). “Attachment A” included a list of  
9 several entities controlled by Defendants and includes identifying information for  
10 those entities. (*See* Motion, Attachment A to Exhibit B). The compliance date for the  
11 subpoena was June 17, 2024. (*Id.*).

## 12 **II. Defendants Rebuffed Plaintiffs’ Attempts To Resolve Any Issues With** 13 **The Subpoena**

14 On May 29, 2024, Defendants wrote to Plaintiffs:

15 The subpoenas that you have propounded greatly exceed that which you  
16 were authorized to obtain.

17 Will you agree to amend those subpoenas to conform to the court’s  
18 order? If not please consider this letter our offer to meet and confer prior  
19 to our seeking the court’s assistance in limiting these subpoenas.

20 (Exhibit A to Banks Declaration). Plaintiffs responded:

21 We discussed this matter on the record at the prior hearing. I told the  
22 court I'd like to issue subpoenas to find defendants' assets that went  
23 beyond that May 1 order because some of the assets weren't with banks  
24 that issue account statements, and were instead with other non-financial  
25 entities like Amazon. The court said that was fine and that the purpose of  
26 the order was to make sure all assets were on the table. Also, I don't

1 believe you have standing to object to subpoenas. But, if there's  
2 something specific you're concerned about, I'm willing to discuss it  
further.

3 (Exhibit B to Banks Declaration). Defendants never described their issues with  
4 the subpoena with any more specificity. Nonetheless, Plaintiffs re-issued most<sup>1</sup> of the  
5 subpoenas to add an instruction stating:  
6

7 The aim of this subpoena is to allow Plaintiffs to identify the current  
8 location of assets that have been in Defendants' control since May of  
9 2022, and Plaintiffs are willing to tailor the request to achieve that goal  
10 in the least burdensome manner possible. For example, producing  
11 correspondence is likely not necessary if you produce other records that  
12 show action upon the assets at issue. Likewise, if you produce account  
13 statements that show the originating account and destination account for  
14 wire transfers and checks at issue, then Plaintiffs will likely tell you that  
you do not need to also produce wire confirmations or copies of the  
checks.

15 (*Id.*) Defendants, however, continued to steadfastly insist that Plaintiffs'  
16 modified subpoenas were still overbroad solely on the grounds that the Court's  
17 original order—which only allowed subpoenas to request account statements from  
18 financial entities—was somehow not affected by the Court's subsequent on-the-  
19 record oral Order that Plaintiffs could more generally issue subpoenas to entities  
20 regarding Defendants' assets. Plaintiffs eventually ended the discussions because  
21 Defendants' flatly incorrect position, that the Court's oral Order was invalid, was a  
22 non-starter.  
23  
24  
25  
26  
27

28 <sup>1</sup> Plaintiffs did not re-issue the subpoenas to a few of the subjects of the original subpoenas because, after issuing the original subpoenas, Plaintiffs determined that those few subjects were unlikely to have responsive documents.

1 As discussed in Plaintiffs’ pending Motion for Sanctions (ECF 62), throughout  
2 this case, Defendants have continued to refuse to comply with the Court’s emergency  
3 asset-disclosure orders. To disrupt Plaintiffs’ efforts to find Defendants’ assets  
4 through third-party discovery—and buy themselves a few extra weeks to continue  
5 shuffling their assets—Defendants filed their Motion about a month after Plaintiffs  
6 issued the subpoenas and only one business day before the date scheduled for  
7 complying with the subpoenas.  
8  
9

## 10 ARGUMENT

### 11 I. Defendants’ Motion To Quash Is Untimely

12 A motion to quash a subpoena must be “timely” filed. Fed R. Civ. P.  
13 45(c)(3)(A). While not all courts agree on the definition of “timely,” many courts  
14 have held that a motion to quash is only timely if it is served within “14 days after the  
15 subpoena is served.” *Lillywhite v. AECOM*, No. C18-1840-JCC, at \*3 (W.D. Wash.  
16 Aug. 5, 2020) (citing Fed. R. Civ. P. 45(d)(2)(B)).  
17  
18

19 Here, Defendants did not timely file their motion because they did not file it  
20 within 14 days after the subpoena was served; Plaintiffs served their subpoenas on  
21 May 16, 2024, and Defendants did not file their Motion until June 14, 2024.  
22

23 Moreover, a motion to quash is untimely when the proponent waits to file the  
24 motion until the moment before the compliance date in the subpoena. *See Allstate Ins.*  
25 *Co. v. Nassiri*, 2011 WL 4905639, \*1 (D. Nev. Oct. 14, 2011) (overruling objections  
26 to magistrate judge order finding an emergency motion to quash subpoena was  
27  
28

1 untimely when three-weeks' notice was provided for a deposition but the motion to  
2 quash was filed only three days before the deposition); *Cardoza v. Bloomin' Brands,*  
3 *Inc.*, 141 F. Supp. 3d 1137, 1141 (D. Nev. 2015) (“The odor of gamesmanship is  
4 often especially pronounced in the context of discovery disputes where it appears  
5 parties routinely seek to delay their discovery obligations by filing an emergency  
6 motion for protective order on the eve of a discovery deadline or noticed  
7 deposition.”).  
8  
9

10 Here, Defendants filed their Motion a month after Plaintiffs issued the  
11 subpoenas and only one business day before the date scheduled for complying with  
12 the subpoenas. It is clear that Defendants delayed filing their Motion so that the filing  
13 itself would accomplish Defendants’ purpose. Specifically, by filing their Motion,  
14 Defendants hoped to delay third-party financial entities’ production of financial  
15 documents until the Motion was resolved at least a month later. As a result,  
16 Defendants will have at least an extra month to shuffle their assets before Plaintiffs  
17 can view Defendants’ financial documents. Therefore, the Motion must be denied  
18 because it is untimely and dilatory.  
19  
20  
21

22 **II. Plaintiffs’ Subpoenas Do Not Exceed The Scope Of The Court’s**  
23 **Written And Oral Orders Governing The Scope Of Expedited**  
24 **Subpoenas**

25 Defendants argue that the subpoenas are invalid because the Court’s written  
26 Order only allowed Plaintiffs to subpoena information about the Original  
27 Jurisdictional Defendants, and Plaintiffs’ subpoena requests information about other  
28

1 entities. The Court’s written Order, however, allowed the subpoenas to extend to  
2 assets “owned or controlled, in whole or in part, directly or indirectly, by or for the  
3 benefit of . . . any entity that is directly or indirectly owned, managed, or controlled  
4 by any Jurisdictional Defendant.” All of the entities listed in the subpoenas clearly  
5 fall within that scope of that Order; indeed, the subpoena itself explains how each of  
6 the entities are owned or controlled by one or more of the Original Jurisdictional  
7 Defendants.  
8

9  
10 Defendants also argue that the subpoenas are invalid to the extent they request  
11 information about Defendants’ entities that Defendants did not disclose in their  
12 interrogatories. The notion that Plaintiffs should be prohibited from discovering  
13 information about assets held in Defendants’ shell companies because Defendants  
14 fraudulently omitted those assets from their interrogatory responses is absurd on its  
15 face. It is also inconsistent with the language of the Court’s Order allowing expedited  
16 discovery, which allows Plaintiffs to request information “for any accounts that are  
17 *required* to be identified in the interrogatory . . .” (emphasis added). If Defendants did  
18 not *in fact* identify the accounts held by their shell companies, that is of no moment;  
19 Plaintiffs may still request information about those accounts because Defendants  
20 were *required* to disclose them (whether they did so or not).  
21  
22  
23  
24

25 Defendants also argue that the subpoenas are invalid because they exceed the  
26 scope of the Court’s written order, which allowed subpoenas to request “account  
27 statements” from “financial entities.” However, the Motion never mentions the  
28

1 Court's subsequent oral Order stating that Plaintiffs could issue subpoenas to any  
2 entities —not just financial entities — requesting Defendants' financial documents.  
3 Plaintiffs properly relied on the Court's oral Order allowing Plaintiffs to issue  
4 subpoenas to any entities for information about the dispositions of assets that  
5 Defendants have controlled, directly or indirectly, since May of 2022. *See Noli v.*  
6 *Commissioner*, 860 F.2d 1521, 1525 (9th Cir. 1988) (holding that an oral order is  
7 binding on the parties even if never reduced to writing or recorded on a docket).  
8  
9 The transcript of that oral Order is not yet available, but Plaintiffs will file it as a  
10 supplement to this brief as soon as it is available.  
11  
12

### 13 CONCLUSION

14 For the reasons discussed above, Plaintiffs respectfully request that the Court  
15 deny Defendants' Motion to Quash.  
16

17 Dated: June 21, 2024

18 /S/ Nico Banks

19 Nico Banks (CA SBN:344705)

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**WORD COUNT COMPLIANCE CERTIFICATION**

The undersigned, counsel of record for Plaintiffs, certifies that this brief contains fewer than 7,000 words, which complies with the word limit of L.R. 11-6.1

/s/Nico Banks

Nico Banks

Dated: June 21, 2024

**CERTIFICATE OF SERVICE**

On June 21, 2024, I served this motion and accompanying papers via first-class mail to the parties listed below with addresses below their names, and via email to the parties with email addresses below their names:

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4  
5  
6  
7  
8 I declare under penalty of perjury under the laws of the State of California that the  
9 foregoing statements in this Certificate of Service are true and correct.

10 /s/Nico Banks

11 Nico Banks

12 Dated: June 21, 2024